

All the Justice *Geld* Can Buy: The Legal Demolition of David Irving

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Background to David Irving's Lawsuit

David Irving was viciously smeared by the media after his testimony at the 1988 Ernst Zündel false-news trial in Canada. Irving's books disappeared from many bookshops, he sustained huge financial losses, and he was ultimately labeled as a "Holocaust denier".^[1]

The harassment campaign against David Irving included numerous arrests in various countries. These arrests do not seem to bother British historian Sir Richard J. Evans. Evans writes: "One would not have expected a reputable historian to have run into such trouble, and indeed it was impossible to think of any historian of any standing at all who had been subjected to so many adverse legal judgments..."^[2]

Richard Evans does not seem to be concerned that David Irving's arrests were attributable to the fact that numerous countries make it a felony to dispute the so-called Holocaust. This reflects poorly on the countries Irving was arrested in rather than on Irving's abilities as a historian. The question is: "What kind of historical truth needs criminal sanctions to protect it?" The Holocaust story would not need criminal sanctions to protect it if it were solidly based on historiographic evidence.

Deborah Lipstadt writes in her book *Denying the Holocaust* that "on some level Irving seems to conceive of himself as carrying on Hitler's legacy." Lipstadt says scholars have described Irving as a "Hitler partisan wearing blinkers" who "distort[ed] evidence...manipulat[ed] documents, [and] skew[ed]...and misrepresent[ed] data in order to reach historically untenable conclusions."^[3] David Irving filed a libel suit against Deborah Lipstadt and Penguin Books Ltd. in British courts to attempt to end these and other similar statements.

Financing Deborah Lipstadt's Defense

Critics of David Irving emphasize that Irving's libel suit against Deborah Lipstadt put Lipstadt in great financial peril. However, Deborah Lipstadt's book *History on Trial* reveals how easy it was for her to raise money for her defense. The president of Emory University and the Board of Trustees allocated \$25,000 for Deborah Lipstadt's defense.^[4] Leslie Wexner, a wealthy Jewish retailer, told Deborah Lipstadt that

he would give whatever it took for her defense. Wexner's only prerequisite was that Lipstadt must hire the best defense counsel possible. Wexner committed \$200,000 to Lipstadt's defense after determining she was hiring top-notch attorneys who would mount an aggressive defense. [5]

Deborah Lipstadt writes that a massive outpouring of funds were contributed by wealthy Jewish donors:

Soon a collaboration developed between Wexner and Steven Spielberg, whose own Shoah Foundation was deeply engaged in taking survivors' testimonies. This collaboration resulted in the effective solicitation of a number of \$100,000 dollar contributors. Bill Lowenberg, a survivor who lived in San Francisco, whose daughter—a participant in the Wexner programs—had briefed him on the case, called [Rabbi Herbert] Friedman. He said he would raise 20% of the costs and began to contact members of the Bay Area Jewish community. Ernie Michel, a survivor who lived in New York, took out his Rolodex and began to call other survivors. Other people pitched in to help. All of this was done quietly and without any publicity or fanfare... [6]

Friedman asked David Harris, executive director of the American Jewish Committee (AJC), to house a defense fund. The committee's board agreed and then voted to make a major contribution to the fund. The Anti-Defamation League and the Simon Wiesenthal Center stepped forward to contribute. The AJC's Harris assigned Ken Stern—the organization's specialist on antisemitism and extremism—to assist me in any way he could. Ken, a lawyer, immediately established contact with Anthony and James. In an unprecedented display of organizational restraint, none of these organizations publicized what they were doing. Within weeks other contributions began to arrive. One person quietly called another. Some of the donations were substantial; many were quite small. Most came from Jews. Some came from non-Jews. I did not solicit funds. Wexner had stressed in no uncertain terms, "Our job is to ensure that you have the means to fight. Your job is to fight." When someone called the Wexners to suggest that I follow a particular strategy, they were told in no uncertain terms, "It's between Deborah and her lawyers. She has the best. Let them do their job." [7]

So within a few weeks, without publicity or any significant work on her part, Deborah Lipstadt had the millions of dollars needed to hire a top-notch defense team. Lipstadt adds the names Michael Berenbaum, Phyllis Cook, Robert Goodkind, Miles Lehrman and Bruce Soll as additional people who helped in the drive to create a fund for her defense. [8]

Deborah Lipstadt writes that her defense team included the following attorneys:

1. *Anthony Julius and James Libson of Mishcon de Reya;*
2. *These two attorneys were skillfully assisted by Mishcon's Juliet Loudon, Laura Tyler, Veronica Byrne, Harriet Benson, Michala Barham, and Pippa Marshall;*
3. *Mishcon's Danny Davis was a source of very wise and generous counsel after the trial;*
4. *Richard Rampton, who Lipstadt describes as "one of England's leading barristers in the field of defamation and libel," was hired to present her case. She also describes him as "not only a uniquely gifted barrister, but the quintessential mench";*
5. *Heather Rogers, Penguin's junior barrister, showed great legal acumen and an uncanny ability to retrieve a document at precisely the right moment;*

6. Penguin's legal representatives, Mark Bateman and Kevin Bayes of Davenport Lyons, were important members of Lipstadt's legal team;

7. On the American side of the Atlantic, Joe Beck of Kilpatrick Stockton "offered his services with his typical giving spirit"

8. Lawyers David Minkin and Steve Sidman of Greenberg Traurig were also zealous in protecting Lipstadt's interests.[\[9\]](#)

So Deborah Lipstadt acknowledges that she had at least 16 attorneys who worked on her case. All of these attorneys are described by her as some of the best money can buy. Penguin also had a team of in-house lawyers, headed by Cecily Engle, a former libel lawyer, and Helena Peacock, who were at the trial most days.[\[10\]](#)

Lipstadt's team of paid expert witnesses included Dr. Richard J. Evans, Dr. Christopher Browning, Dr. Peter Longerich, Dr. Robert Jan van Pelt, and Dr. Hajo Funke. Lipstadt writes that these people "constituted the historian's ultimate dream team." Nikolaus Wachsmann, Thomas Skelton-Robinson and Tobias Jersak were also "critically important components of our research team."[\[11\]](#)

Lipstadt also mentions Jamie McCarthy, Harry Mazal, Danny Kerem, Richard Green and the other members of The Holocaust History Project as "exceptionally forthcoming with their time and expertise." Lipstadt mentions numerous other people in her book as providing assistance.[\[12\]](#)

Richard Evans would seem to have been unaware of the financial backing Lipstadt received from mostly wealthy Jewish donors when he wrote his book *Lying about Hitler*. Evans writes:

Throughout the trial and long afterwards, Irving continually claimed on his website that the defense was being bankrolled by Jews, both wealthy individuals and organized groups, across the world. In fact, of course, there was no secret about the fact that the bulk of the funds came from Penguin Books Ltd., and Penguin's insurers. "Despite Irving's assertion to the contrary," noted Mark Bateman, Penguin's solicitor, "it was Penguin that paid the fees of the experts, leading counsel, junior counsel and my firm." They had also paid the fees of all the researchers. Mishcon de Reya, Anthony Julius's firm of solicitors, had indeed worked for the first two years of the case, in 1996 and 1997, pro bono, for no fee at all. They had only started to charge fees when the final preparations for and conduct of the case began to consume major resources within the firm (at one time, nearly 40 people were working on the case, many of them full-time). It was solely for these costs that Deborah Lipstadt was obliged to pay, and for which she received financial backing from supporters such as Steven Spielberg, amounting in total to no more than a fraction of the overall costs.[\[13\]](#)

Neither Deborah Lipstadt nor Richard Evans details the total costs incurred to defend against David Irving's libel suit. Lipstadt writes that a large envelope presented to her from Anthony Julius before the trial showed a bill of \$1.6 million payable to Anthony Julius's law firm.[\[14\]](#) This amount is "more than a fraction of the overall costs" of her trial as represented by Richard Evans. David Irving is clearly correct that a substantial portion of Lipstadt's defense was bankrolled by wealthy Jews across the world.

The Trial

David Irving in his opening address at the trial claimed that his career had been torpedoed by the defendants. Irving stated: "By virtue of the activities of the Defendants, in particular of the Second

Defendant, and of those who funded her and guided her hand, I have since 1996 seen one fearful publisher after another falling away from me, declining to reprint my works, refusing to accept new commissions and turning their back on me when I approach.” Irving claimed this had been done as “part of an organized international endeavor.” [15]

Deborah Lipstadt’s attorney Richard Rampton opened with the defense’s bottom line: “My Lord, Mr. Irving calls himself an historian. The truth is, however, that he is not an historian at all but a falsifier of history. To put it bluntly, *he is a liar.*” Rampton stated that the case was not about competing versions of history, but about truth and lies. [16]

David Irving’s biggest mistake in his case was choosing to be his own lawyer. Germar Rudolf writes: “Those who choose to be their own lawyer choose a fool.” [17] Irving was at a major disadvantage in his case because he was up against a huge and experienced legal team with only himself as his attorney. Even though Irving testified that he was not an Holocaust historian, [18] much of the testimony in the trial involved the Holocaust story.

Judge Charles Gray’s adverse judgement against Irving in the case was based on ludicrous conclusions. For example, Judge Gray found the Sonderkommando testimony presented in the case to be highly credible. Gray remarked: “The account of, for example, [Sonderkommando Henryk] Tauber, is so clear and detailed that, in my judgment, no objective historian would dismiss it as invention unless there were powerful reasons for doing so. Tauber’s account is corroborated by and corroborative of the accounts given by others such as Jankowski and Dragon.” [19] However, as I have previously written, there are indeed numerous and powerful reasons for rejecting the Sonderkommando testimony as pure invention. [20]

Judge Gray in his decision concluded that “no objective, fair-minded historian would have serious cause to doubt” the existence of homicidal gas chambers at Auschwitz. [21] However, even with Gray’s dismissal of the *Leuchter Report*, the reports and testimony of Germar Rudolf, Walter Lüftl, Friedrich Paul Berg, Dr. William B. Lindsey, Dr. Arthur Robert Butz and other scientists were never refuted at the trial. Deborah Lipstadt and her team of experts were also not able to show how a homicidal gas chamber at Auschwitz actually operated.

Judge Gray also concluded that Irving’s treatment of the historical evidence “fell far short of the standard to be expected of a conscientious historian” and that his estimate of “100,000 and more deaths [in Dresden]...lacked any evidential basis and were such as no responsible historian would have made.” [22] Gray based his conclusion primarily on the testimony of Richard Evans. However, as I have discussed in a previous article, the death toll at Dresden could have easily been as high as 250,000 people. [23]

Aftermath of Trial

After the trial, in front of numerous cameras and reporters in a hotel ballroom, Lipstadt described Judge Gray’s decision as a victory for all those who fight hatred and prejudice. She paid tribute to Penguin for “doing the right thing” and to her magnificent legal team. Lipstadt said she had no pity for David Irving, as it had been her own life and work that had been disrupted by the trial. Lipstadt said that what she would write now would be far harsher than what she originally wrote in her book. [24]

The trial was the lead headline the next day in every single British daily as well as many foreign papers. A sample of these headlines reads:

THE GUARDIAN:

“Irving: Confined to History as a Racist Liar”

THE INDEPENDENT:

“Racist. Antisemite. Holocaust Denier. How History Will Judge David Irving”

“David Irving lost his case—and we can celebrate a victory for free speech”

THE LONDON TIMES:

“Racist who twisted the truth”

“David Irving’s reputation as an historian is demolished”

Numerous editorials in the papers hailed the verdict. [\[25\]](#)

Not surprisingly, even though David Irving never claimed to be an Holocaust historian, Lipstadt writes: “Virtually all the claims by Holocaust deniers prior to the spring of 2000 had been demolished.” [\[26\]](#) Lipstadt fails to explain how a decision by a British judge in a case not involving an Holocaust revisionist historian demolished Holocaust revisionist claims.

In regard to David Irving, the harassment campaign against him continued after he lost his libel suit. For example, Irving spent over a year in jail in Austria from 2005-2006 for expressing his views on the so-called Holocaust. Publishers and bookstore owners are still afraid to promote and sell his books for fear of the backlash from Zionist organizations. Of course, some people will still call you an anti-Semite for mentioning these facts; they claim that Zionist groups and organizations could not possibly have such power. Unfortunately, as David Irving made clear in his lawsuit, Zionist organizations do have such power. [\[27\]](#)

ENDNOTES

[\[1\] http://www.fpp.co.uk/bookchapters/Global/Vendetta.html](http://www.fpp.co.uk/bookchapters/Global/Vendetta.html).

[\[2\]](#) Evans, Richard J., *Lying about Hitler: History, Holocaust, and the David Irving Trial*, New York: Basic Books, 2001, p. 14.

[3] Lipstadt, Deborah E., *History on Trial: My Day in Court with David Irving*, New York: HarperCollins Publishers Inc., 2005, p. xviii; see also Lipstadt, Deborah E., *Denying the Holocaust: The Growing Assault on Truth and Memory*, New York: The Free Press, 1993, p. 161.

[4] Lipstadt 2005, *op. cit.*, p. 30.

[5] *Ibid.*, p. 38.

[6] *Ibid.*

[7] *Ibid.*, p. 39.

[8] *Ibid.*, p. 308.

[9] *Ibid.*, pp. 51, 307.

[10] Guttenplan, D. D., *The Holocaust on Trial*, New York: W. W. Norton & Company, 2001, p. 85.

[11] Lipstadt, 2005 *op.cit.*, pp. 307-308.

[12] *Ibid.*, pp. 309-310.

[13] Evans2001 *op. cit.*, p. 230.

[14] Lipstadt 2005 *op. cit.*, p. 37.

[15] *Ibid.*, p. 80.

[16] *Ibid.*, p. 82.

[17] Van Pelt, Robert Jan, *The Case for Auschwitz: Evidence from the Irving Trial*, Bloomington and Indianapolis: Indiana University Press, 2002, p. 496.

[18] *Ibid.*, p. 137.

[19] Guttenplan, D. D., *The Holocaust on Trial*, New York: W. W. Norton & Company, 2001, pp. 279-280.

[20] Wear, John, "Sonderkommandos in Auschwitz", *The Barnes Review*, Vol. XXIII, No. 1, Jan. /Feb. 2017, pp. 28-32.

[21] Lipstadt2005 *op. cit.*, p. 274.

[22] *Ibid.*

[23] Wear, John, "The Dresden Debate", *The Barnes Review*, Vol. XXII, No. 1, Jan. /Feb. 2016, pp. 50-56.

[24] Lipstadt 2005 *op. cit.*, pp. 277-278.

[25] *Ibid.*, p. 283.

[26] *Ibid.*, p. 298.

[27] http://www.ihr.org/jhr/v19/v19n2p-9_Irving.html.

Author(s):	John Wear
Title:	All the Justice <i>Geld</i> Can Buy: The Legal Demolition of David Irving
Sources:	<i>Inconvenient History</i> , Vol. 11, No. 1 (2019)
Dates:	published: 2019-02-20, first posted: 2019-02-20 16:22:48

<http://inconvenienthistory.com/11/1/6517>